IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4924 of 1991

with

SPECIAL CIVIL APPLICATION No 8694 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGVAT S VAGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4924 of 1991
   MR PV HATHI for Petitioner No. 1-2
   Mr. HH JANI, AGP for respondents.
2. Special Civil Application No. 8694 of 1991
   MR PV HATHI for Petitioner No. 1
   Mr. HH Jani,AGP for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 24/01/2003

ORAL JUDGEMENT

In both these petitions, a challenge is made to the order dated 9th July 1991 being Order No. 242 of 1991 passed by the Superintending Engineer,Ahmedabad, who is the respondent No.2 in these petitions reverting the persons whose names were mentioned in the list, which, inter alia, includes the petitioners herein, from Work-charged Establishment to Daily Wagers. The petitioners have submitted that they have joined the Mechanical Circle, under Narmada Development Department as Daily Wagers in September 1978 and October 1977. It is further stated that they were entitled to be absorbed as Work-charged employees on completion of 5 years of service as per the Government Resolution dated 4th July 1973. The petitioners had further submitted that they have already become eligible to be absorbed as work-charged employees as they had completed the necessary period of service and consequently the respondent No.2 had passed two orders dated 4.4.1989 and 29.6.1989. Pursuant to the said orders the petitioners have been working on the work-charged establishment since April and July 1989 respectively and started to derive all other benefits. The petitioners have further stated that respondent No.2 thereafter without there being any authority to revoke or recall his own orders, issued a common order dated 9th July 1991, being Office Order No. 242/1991 reverting the petitioners from the work-charged establishment to daily-wagers on the assumption that his orders were not in consonance with the order of respondent No.1 dated 31-3-1989 and/or 6th June 1986. It is this order which was challenged before this Court in the present petitions.

2. Heard Mr. PV Hathi, ld. advocate appearing for the present petitioners and Mr. HH Jani, ld. AGP appearing for the respondents. At the time of hearing of these petitions, my attention was drawn to the two orders of this Court, one passed in Second Appeal No. 6 of 2000 on 4-5-2000 and the second passed in LPAs. No. 12 and 13 of 2002 on 31st January 2002. As far as the order dated 4-5-2000 in Second Appeal No. 6 of 2000 is concerned, this Court has observed that if the respondent authorities want to rely upon the Government Resolution, they should afford an opportunity of being heard to the petitioners along with the copy of the resolution on which they want to rely for the purpose of reverting the petitioners from the position of work-charged employees to the position of daily-wagers. This Court directed the respondents in that Second Appeal to issue notice to the petitioners within a period of one month and after hearing the petitioners directed the respondents to pass appropriate orders. In the operative portion of the

judgment of this Court, this Court quashed and set aside the impugned reversion orders and held that the respondents are at liberty to issue notice to the applicants within one month from today and after giving reasonable opportunity an appropriate speaking order be passed in accordance with law. As far as the order and judgment in LPAs No. 12 & 13 of 2002 dated 31.1.2002 is concerned, this Court has observed that the respondents were only trying to rectify their mistake and therefore there was no question of following the principles of natural justice. While arriving at such conclusion, this Court has referred to and relied on the Judgment of the Hon'ble Supreme Court in the case of Calcutta Municipal Corporation v. Sujit Baran Mukherjee [(1997) 11 SCC 463], wherein it was held that in the case of revision of pay-scale after realization of a mistake, the Supreme Court found no force in the contention of violation of the principles of natural justice. This Court has further held in the said LPA that there was no case of any change in the conditions of service in violation of Section 9-A of the I.D. Act being made out by the appellants. This Court has further held that "assuming that the conditions of service of the appellants stood changed to their benefit by virtue of the apparently illegal and arbitrary order of absorption, the subsequent impugned change was also covered by a condition in the former order itself according to which that order was temporary and subject to change." This Court has come to the conclusion that "the change brought about by the impugned action of cancelling the absorption of the appellants on the work-charge establishment was in terms authorised by the essential conditions of the earlier orders." In this view of the matter, the LPA was dismissed.

3. Mr. PV Hathi, ld. advocate appearing for the petitioners in both these matters, submitted that though the issue involved in the present petition was squarely covered against the petitioners by the said Division Bench Judgment of this Court, he has pointed out that the case before the Division Bench was that, mistake was committed by absorbing the petitioners as the work-charge employees and when the said mistake was found they were reverted as daily-wager employees. As far as the present matter was concerned, it was nowhere stated that the petitioners were absorbed as work-charge employees either by mistake or through oversight and hence strictly speaking the facts of the case before the Division Bench and facts of the present matters are some what different and hence the said Judgment cannot be pressed into service. Mr. Hathi has further submitted that the

petitioners should also be given opportunity on the basis of the view taken by this Court while disposing of the Second Appeal No. 6 of 2000. In any case, he has submitted that the petitioners should not be deprived of the benefit of the Resolution dated 17th October 1988. Hence, uptill now either under the order dated 29-6-1989 and thereafter under the impugned order of this Court they were continued in work-charged establishment. If the order of reversion passed by the respondent No.2 is confirmed and challenge to the said order is rejected by this Court today, the services they have put till this date should have been considered while considering the benefit available to them as daily wagers. He has, therefore, requested that necessary directions be issued to the respondent authorities to consider the representation in this regard. Mr. Jani, ld. AGP, appearing for the respondent has not objected to the submission made by Mr. Hathi with regard to making representation and consideration thereof by the respondent authorities, in accordance with law.

4. Having regard to the facts and circumstances of the case and after having heard the ld. advocates appearing for the respective parties and after having perused the memo of Special Civil Application, the documents attached therewith and the affidavit-in-reply tendered by the respondents. I am of the view that the facts of the present case are identical with the facts of the appellants in L.P.A. Nos. 12 and 13 of 2002, and hence there is no question of violation of principles of natural justice and impugned orders do not call for any interference by this Court. However, the present petitioners should not be deprived of making a representation with regard to the consequential benefits as daily wagers to which they are entitled to by virtue of the Government Resolution of October 1988 and in this regard if such a representation is made by the petitioners within one month from today, the respondent authorities are directed to consider the said representation within a period of two months thereafter in accordance with law and pass appropriate orders on such representation.

5. With the above directions, both these petitions are accordingly disposed of. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]